THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No.29203 of 1997

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Dated : 16-09-2005

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Between:

N.Lakshmdi Prabhakar Rao.

.. **PETITIONER**

AND

The Executive Officer, Sri Narayana Swamy Temple and another.

.. RESPONDENTS

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ORDER:

In this writ petition, the petitioner seeks a direction to the first respondent to pay arrears of his salary from June, 1995 till date, as directed by the Deputy Commissioner, Endowments Department, Guntur, vide proceedings in Rc.No.A2/13037/95, dated 02-12-1995 and to enhance his salary on par with the salary payable to clerks of the subject grade temple and continue the petitioner in service as clerk.

Facts, to the extent necessary for this writ petition, are that the petitioner, an intermediate, joined as a clerk in Sri Narayana Swamy Temple (for short "Temple"), Mittapalem village, Chandrasekharapuram Mandal, Prakasham District, on his being appointed, as such, by the then Managing Trustee of the Temple on 30-03-1984, on a monthly salary of Rs.20/-. The income of the Temple, at that point of time, was less than Rs.50,000/- and subsequent to his joining as clerk on 01-04-1984, the Temple was brought under the purview of Section 6 of the A.P. Charitable and Hindu Religious Institutions Endowments Act (for short "Endowments Act") and was notified under Section 6 (c) of the Endowments Act in the year 1984-85. It is stated that the salary of the petitioner was revised, from time to time, and during the year 1994-95, he was drawing a sum of Rs.200/- per month. It is also stated that in the year 1995, the Temple was upgraded under Section 6(b)(ii) of the Endowments Act,

(as its annual income exceeded Rs.1,00,000/-), and was brought under the administrative control of the Deputy Commissioner (Endowments Department), Guntur. The then Deputy Commissioner, Endowments Department, is said to have visited the Temple in June, 1995 and, on considering the income of the Temple, to have appointed an Executive Officer to be in-charge of the day-to-day administration. Pursuant to which, the then Managing Trustee is said to have handed over charge of the Temple and its accounts, etc., to the Executive Officer appointed by the Department in June, 1995. It is stated though the petitioner continued as a clerk even after the Executive Officer took charge of the Temple, he was neither permitted to work in the Temple, even though he regularly attended office, nor was he paid salary on the specious plea that his appointment had not been approved by the Department and that the concerned records were with the Deputy Commissioner. It is stated that the petitioner had informed the Executive Officer that he was appointed by the Managing Trustee, who was competent to appoint a clerk, that he was working as per the appointment order issued by the Chairman of the Trust Board from 01-04-1984, that his salary was being sanctioned in the budget estimates prepared by the competent authorities every year and that he was being paid his salary according to budget sanctions. Though his services were not terminated by the Executive Officer after he took charge in June 1995, and despite the petitioner attending the office of the Temple regularly, he was denied payment of even the abysmally low salary of Rs.200/- per month.

On the basis of the petitioner's representation dated 16-11-1995, the Deputy Commissioner, vide proceedings dated 02-12-1995, directed the Executive Officer to pay arrears of salary to the petitioner immediately and report compliance. However, the Executive Officer did not pay salary to the petitioner. In view of his repeated representations not being considered and inasmuch as the proceedings of the Deputy Commissioner had also been ignored, the petitioner is said to have submitted a representation to the Commissioner, Endowments Department,

Hyderabad, on 22-04-1997, bringing to his notice failure of the Executive Officer to pay the petitioner, his arrears of salary ever since June 1995.

A counter affidavit is filed on behalf of the first respondent. However, the second respondent has not chosen to file his counter affidavit.

In the counter affidavit, the first respondent admits that the petitioner was appointed as a clerk by the then Managing Trustee of the Temple. It is contended that appointment of the petitioner was not approved by the Commissioner of Endowments and, therefore, the petitioner had no right to claim his salary and that as per Temple records the petitioner was not attending to duty from 01-07-1995. It is admitted that the budget sanctioned by the then Assistant Commissioner, Ongole, included the name of the petitioner in the Budget Schedule. It is also admitted that the then Executive Officer, Sri P.Balakotaiah, had deliberately disobeyed the orders of the Deputy Commissioner, vide proceedings No.A2/13037/95, dated 12-12-1995 and that the then Executive Officer had failed to implement the orders of the Deputy Commissioner, Guntur. It is admitted that the Temple's income exceeded Rs.1,00,000/- and was, therefore, re-published under Section 6(b)II) of the Endowments Act 30 of 1987 in the year 1995 and that the Temple was under the control of the Deputy Commissioner, Endowments Department, Guntur. It is also admitted that the Deputy Commissioner, Endowments Department, Guntur, had directed the then Executive Officer of the Temple to pay arrears of salary to the petitioner by his order dated 02-12-1995. It is however, contended that for any appointment made by the then Managing Trustee, prior permission from the Deputy Commissioner was necessary and since there was no prior permission, the petitioner's appointment itself was contrary to law and was illegal. It is also stated that the petitioner has an alternative remedy under Section 92 of the Endowments

Act 30 of 1987, and as such, the writ petition is liable to be dismissed.

None appears for the first respondent.

Learned Government Pleader for Endowments appeared on behalf of the second respondent.

In view of the facts, as admitted in the counter affidavit by the first respondent, that the petitioner was appointed as a clerk by the then Managing Trustee of the Temple, that the then Executive Officer had failed to implement the orders of the then Deputy Commissioner of Endowments, Guntur, dated 02-12-1994, directing arrears of salary be paid to the petitioner, the only question which remains for consideration is as to whether the petitioner could be denied payment of salary on the ground that prior sanction of the competent authority under the Endowments Act was not obtained prior to his initial appointment and as to whether, eight years after the writ petition has been filed, the petitioner should be relegated to avail the alternative remedy under Section 92 of the Endowments Act.

Insofar as the first contention is concerned, learned Government Pleader for Endowments would refer to Section 35(1) and (4) of the Endowments Act, 1987, which reads thus:

> "Appointment of office holders and servants etc:- 1) Every vacancy, whether permanent or temporary, amongst the office-holders or servants of a charitable or religious institution or endowment shall be filled by the Trustee:
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> Provided that in the case of a charitable or religions institution or endowment whose annual income exceeds rupees ten lakhs the Executive Officers, shall appoint the

> office holders and servants thereof.
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> The qualifications, method of recruitment and temporary appointments, pay and allowances, discipline and conduct and other conditions of service of the office holders and servants of a charitable or religions institution or endowment, shall be such as may be prescribed."

It is not in dispute that the petitioner was appointed as a clerk in the first respondent Temple prior to the date on which Act 30 of 1987 came into force and, if at all, his initial appointment in the year 1984, would have to be examined in accordance with the provisions of the A.P. Charitable Hindu and Religious Institutions and Endowments Act 66(Act 17/66) (for short "Charitable Act"). Section 31 of 1966 Act is pari materia with Section 35 of 1987 Act.

Section 31(1) and (5) read as under:

> "Appointment, etc., of office-holders and servants:- (1) Vacancies, whether permanent or temporary, amongst the office-holders or servants of a charitable or religious institution or endowment shall be filled by the trustee in every case where the office or service is not hereditary.
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> (5) The Government may make rules to regulate the qualifications, method of recruitment, pay and allowances, discipline and conduct and other conditions of service of the office-holders and servants of a charitable or religious institution or endowment."

Section 31(5) of the Endowments Act empowers the Government to make rules to regulate the qualifications, method of recruitment etc., to the office-holders and servants of a charitable or religious institution or endowment. Except to state that the competent authority's prior sanction has not been obtained, no rules, prescribed by the Government under the 1966 Act, which were prevailing at the time of

appointment of the petitioner in the year 1984, has been brought to the notice of this court. Learned Government Pleader would, however, place reliance on the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Office Holders and Servants Service Rules, 2000, notified in G.O.Ms.No.888, Revenue (Endowments.I), dated 08-12-2000, more particularly, Rule 5, which reads thus:

> "Schedule of Establishment, pay and allowances etc:- (1) Subject to the provisions of these rules and also the rules issued under Section 35(3) of the Act, and the guide lines issued by the Commissioner, the trustee of every institution shall prepare a Schedule of establishment specifying the designation and the number of posts in each category or grade, their scales of pay, allowances, qualifications, method of recruitment and submit the same to the competent Authority for approval. The competent authority may approve the schedule with such alterations, additions or omissions as may be deemed necessary.
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> (2) The pay and emoluments of each office holder and servant shall be in accordance with the schedule of the establishment approved by the competent authority.
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> (3) No alterations shall be made in the schedule of establishment except with the prior approval of the competent authority."

Learned Government Pleader would submit that since under Rule 5, a schedule is required to be prepared, wherein details of persons, posts held by them etc., are required to be furnished, which, in turn, requires approval of the competent authority, petitioner's appointment not having been approved by the competent authority, his initial appointment itself was illegal. It is well settled that rules made under the Act cannot travel beyond the provisions of the Act, nor would they have retrospective operation, unless the parent act so provide and the Rules themselves so specify. The Rules notified in G.O.Ms.No.888, dated 08-12-2000, only come into operation

subsequent thereto and cannot relate back to the time when the petitioner was initially appointed in the year 1984.

Since no rules governing appointment of servants or office holders of Endowments Department, prevailing in the year 1984, which governs the method of recruitment of such employees and require sanction of the competent authority prior to their appointment, has been brought to the notice of this court, the submission of Sri N. Gurugopal, learned counsel for the petitioner, that in the year 1984, more so, since the Temple was not even under Section 6(c) of the Endowments Act, the Managing Trustee was entitled to appoint the petitioner as clerk and prior sanction thereto is not required stands uncontroverted, and is required to be accepted.

It is clear, from the admission in the counter affidavit of the first respondent that the petitioner was being paid salary as his name was included in the budget estimates sanctioned by the then competent authority, the Assistant Commissioner for Endowments. The fact that he continued in service is not in dispute. It is stated that the Temple records disclose the absence of the petitioner from 01-07-1995. It is the specific case of the petitioner that consequent upon the appointment of the Executive Officer in June 1995, though he attended work, he was not permitted to do so, and his salary was not being paid by the then Executive officer from June 1995 onwards on the ground that prior sanction of the competent authority had not been obtained. In such circumstances, the Temple records would undoubtedly not show the petitioner as having attended duty from 01-07-1995. That by itself would not disentitle the petitioner from being paid wages or arrears thereof, incase his contention, that he was prevented from attending duty is accepted. I do not find any reason to disbelieve the submission of the petitioner in this regard when seen in the light of his representation to the second respondent in November 1995, and the specific order of the Deputy Commissioner on 02-12-1995 directing the then Executive Officer (R-1) to pay arrears of salary to the petitioner. It is clear that the

then Executive Officer had chosen to disregard the directions of the Deputy Commissioner, for reasons best known to him, and had prevented the petitioner from attending duty.

Sri N.Gurugopal, learned counsel for the petitioner, would refer to Section 37 of the Endowments Act 1987 in support of his submission that termination of petitioner's services is by way of punishment and no such punishment could have been imposed without complying with the procedural requirements prescribed in the A.P. Charitable & Hindu Religious Endowments Manual Office Holders and Servants Punishments Rules, 1987 (notified in G.O.Ms.No.830, Revenue (Endowments-I) dated 18-08-1989). Learned counsel would refer to Rule 4 thereof which reads as under:-

> "No order imposing, on an office-holder or servant attached to a Charitable or Religious Institution or Endowment, any of the penalties specified in Section 37 and Rule 3 above other than an order based on facts which have led to the conviction of the office-holder or servant by a Criminal Court shall be passed except after following the procedure laid down in Rule 19 of the Andhra Pradesh Civil Services (Classification, Control and Appeal), Rules, 1963:
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> Provided that this rule shall not apply where the authority competent to impose the penalty is satisfied that, for reasons to be recorded in writing, it is not reasonably practicable to hold enquiry or give opportunity as required under aforesaid Rule 19."

Learned counsel would also refer to Rule 19 of the A.P. Civil Services (Classification, Control and Appeal) Rules, 1963, which reads as under:-

> (19) (1) No order imposing on member of a service a penalty specified in items (i) (ii), (iii), (v) or (ix) of rule 8, or rule 9 shall be passed except after--
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> (a) the member of the service is informed in writing by the

authority competent to impose penalty of the proposal to take action in regard to him and of the allegations on which the action is proposed to be taken, and is given an opportunity to make any representation he may wish to make to such authority: and

(b) such representation if any, is taken into consideration by the authority competent to impose the penalty.

Provided that where it is proposed, after an enquiry, to impose any of the above penalties, it shall not be necessary to give the person charged any opportunity of making a representation against the penalty, the penalty may be imposed on the basis of the evidence adduced during the enquiry.

(G.O.Ms.No.285, G.A. (Ser.C), dt.15-4-1980)

(2) (a) Without prejudice to the provisions of the Public Servants' Inquiries Act, 1850 (Central Act 37 of 1850) in every case where it is proposed to impose on a member of a service any of the penalties specified in items (iv), (vi), (vii), and (viii) in rule 8, the authority competent to impose the penalty shall appoint an inquiry officer, who shall be superior in rank to the person on whom it is proposed to impose the penalty or itself hold an inquiry either suo motu on a direction from a higher authority. In every such case the grounds on which it is proposed to take action shall be reduced to the form of definite charges, which shall be communicated to the person charged, together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders in the case. He shall be required, within a reasonable time, to file a written statement of his defence and to state whether he desires an oral inquiry or to be heard in person or both. The person charged may, for the purpose of preparing his defence, be permitted to inspect, and take extracts from such official records as he may, provided that the inquiry officer may for reasons to be recorded in writing, refuse such permission if, in his opinion, such records are not relevant for the purpose or it is against public interest to allow access thereto. On receipt of the statement of defence within the specified time or such further time as may have been given, an oral inquiry shall be held if such an inquiry is desired by the person charged or is decided upon by the enquiry officer or is directed by the

competent authority. At the inquiry, oral evidence shall be heard as to such of the allegations as are not admitted, and the persons charged shall be entitled to cross examine the witnesses, to evidence in person and to have such witness called, as he may wish, provided that the inquiry officer may, for special and sufficient reasons to be recorded in writing, refuse to file call a witness. In the case where disciplinary action is initiated on the report of Anti Corruption Bureau, the inquiry officer may allow the concerned investigation officer to adduce the evidence to examine the witnesses and to cross examine the defence witnesses with a view to proving the charges. After the oral inquiry is completed, the persons charged shall be entitled to file, if he so desires, any further written statement of his defence. If no oral inquiry is held and the person charged desires to be heard in person, a personal hearing shall be given to him. The inquiry officer shall, on completion of the inquiry or the inquiry or the personal hearing of the person charged or both, forward the proceedings of the enquiry to the authority competent to impose the penalty unless he is himself such an officer. The proceedings shall contain the charges framed against the person charged along with the grounds for charge, written statement filed in defence, if any, a sufficient record of the evidence adduced during the oral inquiry, a memorandum of the points urged by the person charged during the personal hearing, and a statement of the findings of the inquiry officer on the different charges and grounds therefor.

Provided that when the inquiry is conducted before the Tribunal for Disciplinary Proceedings, the Director or Additional Director of Prosecution shall head the prosecution evidence in addition to or in lieu of the Investigating Officer of the Anti Corruption Bureau on behalf of the Government……"

It is clear from Rule 4 that, without compliance with the procedure prescribed under Rule 19, no punishment could be imposed on the petitioner. The aforesaid Rule 19 prescribes a detailed procedure, whereunder the employee is required to be put on notice, his explanation sought for and an enquiry to be conducted, wherein the employee is required to be given a reasonable opportunity to defend himself and

only thereafter, the competent authority is empowered to impose a punishment which would include a punishment resulting in terminating the services of an employee. It is the specific case of the petitioner that he was not allowed to work, which fact is not disputed in the counter affidavit. Since the statutorily prescribed procedural requirements for terminating the services of a Temple employee has not been complied with, the petitioner is, entitled to be reinstated in duty and for arrears of salary.

Sri N.Gurugopal, Learned counsel for the petitioner would submit that subsequent to filing of the writ petition, the Temple has now been upgraded to Section 6(a) Temple and its income exceeds Rs.70,00,000/- per annum.

Learned Government Pleader would, however, contend that since the petitioner has an effective alternative remedy under Section 92 of the Endowments Act and this court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, should not permit the petitioner to invoke its jurisdiction without exhausting the alternative remedy under Section 92 of the Act. Section 92 of the Act confers powers on the Commissioner to revise the orders of his subordinates and under sub-section (1) thereof, the Commissioner can suo-moto call for the records of any officer subordinate to him or that of an executive officer to satisfy himself as to the correctness, legality or propriety of such a decision and to revise such an order. Sri N.Gurugopal, learned counsel for the petitioner, would submit that the petitioner had submitted a representation to the Commissioner on 22-04-1997, which, though not titled as a revision, could certainly have been entertained by the Commissioner under Section 92 and necessary orders could have been passed thereon. Learned counsel would submit that since no action has been taken thereupon by the

Commissioner in the year 1997, the petitioner was constrained to approach this court and since more than eight years have elapsed, since then, the petitioner should not be thrown out at this stage and be asked to exhaust the alternative remedy prescribed under the Act.

It is well settled that while this court would, normally, not entertain a writ petition where there is an effective alternative remedy available under the statute, mere existence of an alternative remedy is not a bar for exercise of jurisdiction under Article 226 of the Constitution of India. Persons, approaching this court under Article 226 of the Constitution of India, are normally, relegated to exhaust alternative remedies at the stage of the admission of the writ petition and not when the writ petition has been admitted and the matter is pending on the file of this court for the past eight years. It is also well settled that where the order is said to be in violation of principles of natural justice, this court would, normally, not refuse to entertain the writ petition on the ground of failure to exhaust the alternative remedy. Be that as it may, the dispute in this writ petition is for payment of an abysmally low salary of Rs.200/- per month and as the writ petition has been pending on the file of this court for eight years, there is no justification whatsoever in now asking the petitioner to exhaust the alternative remedy of a revision under Section 92 of the Endowments Act. The contention of the learned Government Pleader is, therefore, rejected.

There shall be a direction to the respondents to pay the petitioner his arrears of salary, as applicable under the rules and as revised from time to time, and to continue the petitioner in service. The petitioner shall be paid his salary within a period of three months from the date of receipt of a copy of this order. This order shall not preclude the respondents from taking such action as is available to them under law against the petitioner, incase, the initial appointment of the petitioner is held to be contrary to any statutory provisions under the then Endowments Act or

rules made thereafter.

The writ petition is accordingly disposed of. No order as to costs.

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RAMESH RANGANATHAN, J

Dated:16-09-2005

Prv